

# Immigrants and Housing

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## Basic Benefits Training Immigration and Public Benefits March 8, 2018

These training materials are edited excerpts from **Chapter 9, Immigrants and Housing**, in *Legal Tactics: Finding Public and Subsidized Housing*, Third Edition, 2009 (Chapter 9 was updated in 2015). The complete chapter, including footnotes, references, a glossary and more is online at <http://www.masslegalhelp.org/housing/finding-housing-booklets>.

These are the current rules. If there are new rules or policies, we will post them on [masslegalhelp.org](http://masslegalhelp.org) and [masslegalservices.org](http://masslegalservices.org).

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# Eligibility

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## 1. Do I have to be a U.S. citizen to qualify for public and subsidized housing or vouchers?

**No**, you do not have to be a United States citizen to qualify for public or subsidized housing or rental vouchers. Lawful permanent residents and many other immigrants may qualify for all types of assisted housing. You are eligible for **state** housing programs no matter what your immigration status is.

If your *entire* family is undocumented, you will not be eligible for the largest **federal** programs Listed in **Question 3** but you may be eligible for other programs listed in **Question 2**. For these federal housing programs, if *some but not all* household members are citizens or have certain types of eligible immigration status, your portion of the rent will be higher than it otherwise would be. This may result in a rent that you cannot afford and make it unwise for you to apply for those programs. See **Questions 9** and **10**.

Some housing programs do not require information about immigration status or citizenship at all. Other programs are allowed to ask you about your citizenship or immigration status.

## 2. What housing programs are immigrants eligible for no matter what their status?

In Massachusetts, **all state** housing programs and **some federal** programs **do not have any citizenship or immigration status requirements**.

### **State housing programs with no immigration restrictions:**

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- State public housing
- Massachusetts Rental Voucher Program (MRVP)
- Alternative Housing Voucher Program (AHVP)
- State-funded multifamily (privately owned subsidized) housing

### **Federal housing programs with no immigration restrictions:**

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- Some federal multifamily (privately owned subsidized) developments
- Housing Opportunities for Persons with AIDS (HOPWA)

- McKinney Homeless Programs (except for the McKinney Section 8 moderate rehabilitation program)
- Shelter Plus Care
- Supportive Housing
- HOME Rental Assistance
- Low Income Housing Tax Credit properties (unless there are other housing program rules for the property restricting immigrant eligibility)

### 3. What housing programs limit immigrant eligibility?

These major federal housing programs will only consider an application if you or at least one person in your household is a citizen or has an “eligible” immigration status. These are the *restricted programs*:

- Federal public housing
- Section 8 Housing Choice Vouchers
- Section 8 moderate rehabilitation program
- Most federal multifamily (subsidized) developments
- Federal First Time Homebuyer programs

### 4. Who is eligible for federal housing programs that limit admission based on immigration status?

Your whole family may qualify for any **federal** housing program listed in **Question 3** if *at least one member of your household is a citizen or eligible noncitizen*, as follows:

#### **Citizens**

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- A citizen born in the United States
- A naturalized citizen

#### **Eligible Noncitizens**

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- A lawful permanent resident
- A *registry* immigrant (admitted for permanent residence by the U.S. Attorney General and eligible for citizenship)

- A *refugee* or an *asylee*
- A *conditional entrant*
- A *parolee*
- A *withholding grantee*
- A person granted 1986 *amnesty* status
- A resident of the Marshall Islands, Micronesia, Palau, or Guam
- A victim of trafficking or relatives of such a victim
- VAWA (Violence Against Women Act) Self Petitioners

If at least one member of your household fits into any of the categories above, your whole family can apply to all of the **federal restricted programs**. This person does not have to be the head of household.

**If, however, no one in your household fits into any of these categories, you are not eligible for the federal housing programs listed in Question 3. Your family may still apply to the housing programs listed in Question 2.**

Many housing authorities offer both **state and federal** housing programs. You can apply for state-funded housing at these housing authorities even if you are not eligible for federally funded housing because of your immigration status, or if the federal rent will be too high. You should make sure that you are on the waiting list only for the housing authority's **state-funded** housing.

## **5. What if I will eventually have a “green card,” but I don’t have one now?**

Unless you have an immigration status listed in **Question 4**, you are **not eligible for the federal** housing programs in **Question 3**. However, you remain eligible for state housing or the federal housing in **Question 2**. Once you are granted lawful permanent resident status, or a “green card,” you may be eligible for all of the federal housing programs. Until then, you are eligible for the federal housing programs only if another household member is a citizen or falls into any of the *eligible noncitizen* categories discussed in **Question 4**.

## **6. What if I have work authorization? Is this enough for federal housing that restricts immigrants?**

**No.** You still must meet the immigration restrictions for the federal programs listed in **Question 3**. A number of people may qualify for work authorization due to their immigration status and

still not be considered *eligible noncitizens* for the federal housing programs discussed in **Question 3**. You must fit into one of the categories discussed in **Question 4**.

## 7. What if I am a victim of domestic violence?

If you or your children are victims of domestic violence and are not U.S. citizens, you may qualify for certain special immigration protections under the Violence Against Women Act (VAWA). Recent HUD rules allow VAWA Self- Petitioners to indicate they are in “satisfactory immigration status”. After a verification procedure shows that these applicants have applied for VAWA protection the housing authority or subsidized owner, may count them as an eligible non-citizen. See article at <http://nlihc.org/article/hud-clarifies-certain-noncitizen-victims-domestic-violence-are-eligible-housing-assistance>.

## 8. Am I eligible for housing if not everyone in my family has an eligible immigration status?

**Yes.** There are no immigration restrictions for **state-assisted** housing or the **federal programs listed in Question 2**. You may also qualify for any **federal** housing programs listed in **Question 3** if at least one member of your household is a *citizen* or *eligible noncitizen*. See **Question 4**. Households that include people with both qualified and not qualified immigration status are called **mixed households**. For example, if you do not have an eligible immigration status for federal housing but your child was born in the United States and is a U.S. citizen, you have a *mixed household*.

If you have a *mixed household*, you will be eligible only for *pro-rated assistance* in the **federal restricted programs** listed in **Question 3**. This may mean the rent will be too high for you to afford. See **Questions 9** and **10**.

## 9. What is pro-rated rent for mixed families in federal housing?

*Pro-rated assistance* (or *pro-rated rent*) applies to the major **federal housing programs in Question 3** and means that the housing authority or multifamily owner will base your housing assistance or subsidy on the number of *eligible* family members, not on the total number of people, in the household. You can move into a unit available through one of these programs.. However, your subsidy will be calculated as if your *mixed* household included only the *citizens*

*and eligible noncitizens*. Although the subsidy will be lower, the incomes of all household members are counted. Therefore, your share of the rent will be higher in the programs listed in **Question 3** than in the housing programs listed in **Question 2**.

For example, if you have four people in your household and only two of them are *citizens or eligible noncitizens*, the housing authority will give you a Section 8 subsidy as if you had a two-person household. The subsidy will be *pro-rated* by 50%. If in this example, the total rent is \$1,200, and the Section 8 voucher is worth no more than \$900, this is how it would work:

*Calculation of voucher before pro-ration*

Total rent to landlord	\$1,200
Section 8 voucher worth	\$900
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<b>Your rent payment without pro-ration</b>	<b>\$300</b>

*Pro-ration of voucher*

Section 8 voucher worth	\$900
Housing authority pays 50%	\$450
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<b>New pro-rated Section 8 voucher</b>	<b>\$450</b>

*Re-calculation of your rent with pro-ration*

Total rent	\$1,200
Pro-rated Section 8 voucher worth	\$450
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<b>Your rent payment with pro-ration</b>	<b>\$750</b>

Calculations for the federal public housing and subsidized developments are figured a little differently, but the general rule is the same: pro-rated rent is higher and the amount depends on what proportion of your household is eligible.

## **10. If I have a mixed family where some, but not all, household members have eligible immigration status, should I still apply to federal housing?**

Often *pro-rated assistance* means that the rents in **federal restricted programs** are too high to afford, so it is usually a better idea to pursue the unrestricted housing programs listed in **Question 2**. If you are applying at a housing authority that runs both state-funded and federally-funded housing programs, and your pro-rated rent would not be affordable, you should ask to withdraw your application from the federal programs listed in **Question 3** but keep your application active for the programs listed in **Question 2**.

# Immigration Status

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## 11. Does a housing authority or a subsidized landlord check my immigration status?

If you apply for housing programs listed in **Question 2**, then the housing authority or landlord should not check your immigration status.

If you apply for the **federal** housing programs in **Question 3**, the housing authority or subsidized landlord will verify the immigration status of all members of your household who plan to live in the apartment.

## 12. What if I do not have eligible status, or I do not want my immigration status checked?

It would be best to apply for a **state** housing program or the federal programs listed in **Question 2**. If you apply for a **federal** housing program listed in **Question 3**, the housing authority or subsidized landlord will require you to sign a form, sometimes called a *Section 214 Declaration*, for each household member claiming that he or she is either a *citizen* or an *eligible noncitizen*. If you know that someone in your household does not have eligible status, you should **NOT** complete this form. By signing this form, you are claiming that everyone in the household has eligible status, and you are agreeing that immigration authorities can check on your status.

**Instead of completing the Section 214 Declaration**, you can provide a written statement that one or more household members are not claiming to have eligible status. This is sometimes known as a *Non-Contending Form*. See the sample Non-Contending Form in the **Reference Materials in Chapter 9 of *Legal Tactics: Finding Public and Subsidized Housing***. Once a Non-Contending Form is completed, the housing authority or subsidized landlord should not check the immigration status of that person. Be warned, however, that if there is one or more ineligible household member, your rent will be *pro-rated*. See **Questions 9 and 10**.

## 13. What verifications can the housing authority or subsidized landlord require?

If you claim to be a citizen, the housing authority or subsidized landlord may request that you provide some proof of citizenship for **federal** housing in **Question 3**. For **federal** housing, if you



are 62 years of age or older and an *eligible noncitizen* (see **Question 4**), you only need to provide proof of your age and a sworn statement of eligible immigration status. You do not need to provide any other documents proving your immigration status.

For all other *eligible noncitizens* in the household, you must provide documents from one of the immigration authorities to prove eligible immigration status, as well as a form consenting to verification of your information by the immigration authorities. **A list of acceptable documents you can use to prove immigration status is included in the Reference Materials at the end Chapter 9 of *Legal Tactics: Finding Public and Subsidized Housing*.**

The housing authority or subsidized landlord should give you a notice telling you when to provide any requested documents. If you need more time, you can request an extension of up to 30 more days.

## **14. What happens once I have given the housing authority or subsidized landlord the papers they request for federal housing?**

For **federal** housing, once you have submitted the immigration documents requested by the housing authority or subsidized landlord, they will then contact the Department of Homeland Security (DHS), an immigration authority, to conduct a computer check to verify *eligible noncitizen* status for any household members claiming that status through the SAVE system. Through this computer system, DHS may verify that you are eligible, may determine that you are not eligible, or may require the housing authority or subsidized landlord to ask you to provide additional documents. DHS may take some time to respond. In the meantime, the housing authority or subsidized owner should continue to process your application. As long as you have submitted the documents requested, your application should not be delayed or denied simply because it takes awhile to complete this process. If you have claimed that all household members are *citizens* or *eligible noncitizens*, you should get full housing assistance until there has been a final verification of your eligibility.

If the housing authority or subsidized landlord ultimately decides that one or more household members are not *eligible noncitizens* based on information they receive from DHS, they must give you written notice of this. The notice must advise you of various rights that you have, including *appeal* rights and the right to *pro-rated assistance* if one or more household members are eligible.

## **15. Is there an appeal process?**

If you think that you or a household member is an *eligible noncitizen* and the housing authority or subsidized landlord wrongly decided that you were not, you have the right to *appeal* this

decision at the housing agency. You also have the right to appeal if you think the housing authority or subsidized landlord miscalculated what the *pro-rated rent* should be.

Any appeal must be requested within 30 days of the notice from the housing authority or subsidized landlord. During this appeal, there should be no action by the housing authority or subsidized owner and your application should not be delayed or denied. For more information about an appeal, see **Chapter 7 of *Legal Tactics: Finding Public and Subsidized Housing: Challenging a Denial of Housing***.

# Applications and Immigration Status

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## 16. Can I be reported or deported for applying to public or subsidized housing?

Under current policies, **federal** Housing Authorities and subsidized owners almost never release information about immigration status to DHS (although they do report to HUD).

Housing programs are not required to report to immigration authorities if they merely “suspect” that someone does not have eligible status. They have to “**know**” about your status after making a formal determination. And “know” is defined very narrowly.

There is only one situation, and it is *very rare*, where a federal housing program is required to report lack of eligible immigration status: if you state on an application that you have eligible immigration status, you are denied housing, you *appeal* your denial of housing, and, during the course of this appeal, you are found not to have eligible status. In that case, after a hearing and determination, a housing program will likely report that you are “known” not to have eligible status or known to be unlawfully present.

**State-funded** housing programs do not collect citizenship or immigration information; in any case, these programs should also be prohibited from distributing such information by laws protecting confidentiality.

Although the U.S. Immigration and Customs Enforcement division of the Department of Homeland Security maintains a toll-free number to accept anonymous reports of immigration

and customs violations, we have never heard of a housing authority or subsidized owner making such a report

## **17. Will I be considered a “public charge” for applying to federal or state housing programs?**

**Not as of today.** Under current rules, immigration authorities will not consider you a *public charge* for applying for or receiving housing assistance. A *public charge* is a person who will likely need government financial support through cash assistance, such as Transitional Assistance for Families with Dependent Children (TAFDC), or through long-term institutionalized care, like nursing home care. Although there is some concern that in the future, DHS may start to consider receipt (although not past receipt) of federal housing assistance in the public charge determination, this is not now a problem. For updates on this see [masslegalhelp.org](http://masslegalhelp.org)

## **18. Can my immigration status be affected if I do not accurately report my current immigration status on my housing application?**

**Yes.** If you falsely claim to be a *citizen* or an *eligible noncitizen* on your housing application, the immigration authorities can deny your immigration application and can refuse to let you enter, return to, or become a legal resident of the United States. You will not only be denied housing benefits but you can also suffer severe immigration consequences. Therefore, do not put anything on a housing application that is incorrect or untrue.

There are many instances when an immigration status may not be clear. If your immigration status is complicated and you are not sure whether you are eligible for a government housing program, you can write that on your application. You should also provide documents that show why you think you might be eligible for the housing program.

## 19. What should I put on the application about my income if I work but have not reported my income for taxes?

Most housing programs base the amount of rent on the household's income, and a family could be charged with fraud or evicted for failing to report income.

Immigrants who do not have a Social Security number can and should apply to the Internal Revenue Service for an Individual Taxpayer Identification Number (ITIN), an identification number for tax purposes that allows you to report income and pay taxes if you do not qualify for a social security number. You can apply for an ITIN by filling out Form W7, found at: [www.irs.gov](http://www.irs.gov) (in the Searching Forms and Publications search box type in "W7"). You can also get this form by going to an IRS office, or by calling 800-TAX FORM to have a copy mailed to you (takes 7-15 days), or faxing in a request to 703-368-9694.

For information on ITINs see <https://www.americanimmigrationcouncil.org/research/facts-about-individual-tax-identification-number-itin>

## 20. Do I need to provide a Social Security number?

In general, housing programs can and do ask for Social Security numbers for every household member to check information on your application, such as your income.

You should never provide someone else's or a false Social Security or other government-issued identification number (such as the one assigned by the state for the purpose of other cash benefits, like welfare).

For **federal housing** every member of the household must provide a Social Security number *EXCEPT* for those household members who do not claim to have eligible immigration status. They are not required to provide a Social Security Number.

If you apply for **state housing** programs and do not have a Social Security number, there are no regulations about how to deal with this situation. State law does require adult household members in state-assisted housing to provide Social Security numbers. **However, the Massachusetts Department of Housing and Community Development (DHCD) has notified housing authorities that an applicant does not need a Social Security number to be eligible for its state-assisted programs - although if they have one they must provide it. Details are in Chapter 9 of *Legal Tactics: Finding Public and Subsidized Housing*.** If an adult member of your household does not have a Social Security Number, you should ask whether there are other forms, such as pay stubs and bank account statements, to use to verify identity or income.

A housing agency or owner may also tell you that that they need a Social Security number so that they can search for your criminal history, or Criminal Offender Record Information (CORI). See **Chapter 2 of *Legal Tactics: Tenant Screening***. It is true that recent revisions to CORI regulations permit Social Security numbers to be one of the sources of information used to help verify identity. However, using Social Security numbers is not mandatory, and there are other sources of information that can be used to verify your identity. You should tell the housing agency or owner that no Social Security number has been assigned to you, that you understand that having a Social Security number is not necessary for you to be eligible for the program, that you are willing to certify that you have no Social Security number, and that you are willing to cooperate in providing other verifications.

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